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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/870,127 | 05/29/2001 | Adnan Asar | KEYNP007 | 6508 |
| 26541 | 7590 | 02/15/2006 | EXAMINER | |
| Cindy S. Kaplan P.O. BOX 2448 SARATOGA, CA 95070 | | | PWU, JEFFREY C | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2143 | |
| DATE MAILED: 02/15/2006 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/870,127

Applicant(s)

ASAR ET AL.

Examiner

Jeffrey C. Pwu

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/16/05 Amendment/RCE.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-31 and 34-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-31 and 34-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/16/05 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4, 7-31, and 34-63 are rejected under 35 U.S.C. 102(e) as being anticipated by Shaw (U.S. 2002/0124098).

Shaw teaches a system, method and computer program product for measuring streaming media over a network, comprising:

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- connecting a data acquisition agent to the network; (109 – “monitoring agent” over 100 – content delivery network “CDN”)
- generating a list of measurement targets (502), associated configuration parameters(504), and schedule (506) based on data received for each of the measurement targets; (also see paragraph [0013]) “A reflector network is used in conjunction with a content delivery network (CDN) to enable requesting end users to subscribe to live streams that have been published to CDN entry points. A reflector is a generalized packet router program. The reflector network preferably comprises a hierarchy of reflectors: at least one reflector located at each entry point to the CDN, at each edge node at which requesting users may be directed by the CDN to obtain live streams, and at various "reflector" nodes located within at least one intermediate layer (in the hierarchy) between the entry points and the edge nodes. The intermediate layer is useful to facilitate delivery of streams for which there is high demand. The edge nodes and each reflector node also include a manager program that arranges for feeds. When an end user is directed to an edge node that is not yet receiving the desired stream, the edge node's manager issues a subscription request to a set of reflector nodes. If the reflector node(s) are already receiving the desired stream, their reflector(s) begin sending it to the requesting edge node”)
- receiving the list of measurement targets, associated configuration parameters, and schedule at the data acquisition agent; (, 502, 504, 506)

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- sending a request for streaming media, based on the received list of measurement targets and schedule, from the data acquisition agent to a media source identified as one of the measurement targets connected to the network; (set reflectors 204a-204n)
- receiving streaming media from the measurement target in response to the request for media at the data acquisition agent, monitoring the streaming media, collecting performance measurements for the streaming media; (Agents typically perform various tests and monitor traffic conditions to identify Internet congestion problems-paragraph [0022]; also see fig.1, 115 – origin server, 106 – initiator, 114 - monitoring)
- sending the performance measurements to a data collection server configured for collecting and storing data received from a plurality of data acquisition agents (302); (paragraph [0028])
- wherein receiving streaming media comprises receiving streaming audio; (paragraph [0023])
- wherein receiving streaming media comprises receiving streaming video; (paragraph [0023], [0027] – VOD)
- wherein receiving streaming media comprises receiving streaming audio and video; (paragraph [0023])

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- wherein collecting performance measurements comprises collecting packet information;

(paragraph [0024])

- wherein collecting performance measurements comprises collecting frame information;

(paragraph [0006])

- wherein collecting performance measurements comprises collecting bandwidth information;

(paragraph [0006])

- wherein collecting performance measurements comprises identifying the code used to encode a clip (paragraph [0006]; fig.6)

- wherein the network is the Internet (paragraph [0024])

- wherein connecting a data acquisition agent to the network comprises connecting a plurality of data acquisition agents to the network at a plurality of locations (502, 504; fig.5)

- wherein each of the data acquisition agents include an internal clock coordinated with the other data acquisition agent clocks (paragraph [0008]-[0010])

- wherein collecting performance measurements comprises collecting measurements for a predetermined period of time (paragraph [0008]-[0010])

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- wherein the configuration parameters comprise a URL containing media to be played and performance measurements to be collected (paragraph [0023])
- wherein the schedule information includes playback time. (see “QuickTime”)

Allowable Subject Matter

4. Claims 21-24, 36-37, 39, 53, and 60-63 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments with respect to claims 1-4, 7-31, and 34-57 have been considered but are moot in view of the new ground(s) of rejection.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey C. Pwu whose telephone number is 571-272-6798. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



2/11/06

EXAMINER PWU
DATE EXAMINER